SAMAT DIN & PARTNERS

v.

BANK PEMBANGUNAN MALAYSIA BHD & ANOR

COURT OF APPEAL, KUALA LUMPUR
GOPAL SRI RAM JCA
ABDUL MALEK AHMAD JCA
AHMAD FAIRUZ JCA
[APPEAL NO: B-02-672-1995]
1 JULY 1997

LEGAL PROFESSION: *Solicitor and client - Stakeholder, solicitor acting as - Whether has any claim to subject matter of stakeholding - Interpleader proceedings*

The appellant, a firm of solicitors, had prepared a sale & purchase agreement ('the agreement') between a vendor ('Jasudi') and a purchaser ('HY') in respect of a piece of land. Subsequently, HY raised a loan ('the loan') from the 1st respondent to pay the balance of the purchase price ('the balance'), and a charge was created in favour of the 1st respondent. The moneys due under the loan were then released after the creation of the charge.

Under the agreement, the balance, by way of loan from the 1st respondent, was to come into the appellant's hands. However, the 1st respondent released the moneys directly to HY, and Jasudi was not paid the balance in full. Jasudi then commenced proceedings against both HY and the appellant for specific performance or alternatively for the return of the title.

Subsequently, the 1st respondent filed an originating summons claiming the return of the issue document of title. The 2nd respondent, being one of the guarantors of the loan, and claiming to have settled the loan in full, then asserted his right to possess the issue document of title. The trial judge, however, took the view that the 1st respondent's action should have been proceeded with as a writ and, thus, ordered the conversion of the originating summons.

Thereafter, the 1st respondent took out an application to have the issue document of title placed in its custody. The trial judge acceded and directed the appellant to deliver up the issue document of title to the 1st respondent. The appellant appealed.

Held:
Per Gopal Sri Ram JCA

[1] The appellant, as solicitors, could not resist the 1st respondent's claim for custody of the issue document of title. A solicitor acting as a stakeholder has **no** claim whatsoever to the subject matter of the stakeholding. If numerous claims are made of the solicitor in respect of the subject matter of the stakeholding, it is plain where his duty lies; it is for him to apply to the court by way of interpleader proceedings to seek directions as to what he should do.

[2] The appellant could not resist the 1st respondent's claim on the ground that Jasudi had not been satisfied or that the 2nd respondent had settled the loan in full. Those were issues germane in any dispute between the 1st and 2nd respondents, or between HY and Jasudi. They afforded absolutely no defence to the 1st respondent's application for custody of the issue document of title.

[Appeal dismissed; orders of trial judge affirmed.]

*[**Bahasa Malaysia** Translation of Headnotes]*

PROFESYEN UNDANG-UNDANG: *Peguamcara dan anakguaman - Peguamcara bertindak sebagai pemegang stake - Samada mempunyai apa-apa tuntutan kepada halperkara pemegangan stake - Prosiding interplider*

Perayu, sebuah firma peguamcara, telah menyediakan perjanjian jualbeli ('perjanjian tersebut') antara penjual ('Jasudi') dan pembeli ('HY') berhubung dengan sebidang tanah. Kemudiannya, HY telah mendapatkan satu pinjaman ('pinjaman tersebut') daripada responden pertama untuk membayar baki harga belian ('baki tersebut'), dan satu gadaian telah diwujudkan atas nama responden pertama. Wang yang kena dibayar di bawah pinjaman itu telah kemudiannya dilepaskan setelah gadaian tersebut diwujudkan.

Di bawah perjanjian tersebut, baki itu, melalui pinjaman daripada responden pertama, seharusnya diterima oleh perayu. Walaubagaimanapun, responden pertama telah melepaskan wang itu secara terus kepada HY dan Jasudi telah tidak dibayar baki tersebut sepenuhnya. Jasudi kemudiannya telah memulakan prosiding terhadap kedua-dua HY dan perayu untuk perlaksanaan spesifik atau secara alternatifnya bagi pengembalian hakmilik tersebut.

Berikutan itu, responden pertama telah memfailkan satu saman pemula yang menuntut pengembalian dokumen hakmilik keluaran. Responden kedua, yang merupakan salah seorang penggerenti pinjaman itu, dan menuntut telah menjelaskan pinjaman itu sepenuhnya, kemudiannya telah menegaskan haknya untuk mendapatkan dokumen hakmilik keluaran itu.

Hakim perbicaraan namun begitu, berpendapat bahawa tindakan responden seharusnya diteruskan secara satu writ dan, dengan itu, memerintahkan penukaran saman pemula tersebut.

Selepas itu, responden pertama telah mengeluarkan satu permohonan untuk meletakkan dokumen hakmilik tersebut di bawah jagaannya. Hakim perbicaraan telah bersetuju dan mengarahkan perayu supaya menyerahkan dokumen hakmilik keluaran itu kepada responden pertama. Perayu telah merayu.

Diputuskan:
Oleh Gopal Sri Ram HMR

[1] Perayu sebagai peguamcara, tidak dapat menolak tuntutan responden pertama untuk mendapatkan dalam jagaannya dokumen hakmilik keluaran itu. Seseorang peguamcara yang bertindak sebagai pemegang stake tidak mempunyai apa-apa tuntutan sama sekali kepada halperkara pemegangan stake itu. Jika terdapat banyak tuntutan dibuat mengenai peguamcara berhubung dengan halperkara pemegangan stake, kewajipan beliau jelas kelihatan; beliau seharusnya memohon kepada mahkamah melalui prosiding interplider untuk mendapatkan arahan mengenai apakah yang harus beliau lakukan.

[2] Perayu tidak boleh menolak tuntutan responden pertama atas alasan bahawa Jasudi telah tidak dibayar sepenuhnya atau bahawa responden kedua telah menjelaskan pinjaman itu sepenuhnya. Itu merupakan isu-isu yang berkaitan dalam mana-mana pertikaian antara responden pertama dan kedua, atau antara HY dan Jasudi. Mereka telah tidak secara mutlaknya memberikan apa-apa pembelaan kepada permohonan responden pertama untuk mendapatkan penjagaan dokumen hakmilik keluaran tersebut.

[Rayuan ditolak; perintah-perintah hakim perbicaraan diikrarkan.]

Legislation referred to:
Contracts Act 1950, s. 93
National Land Code 1965, s. 244

[Appeal from High Court Malaya, Shah Alam; Originating Summons No: 24-61-1995]

For the appellant - Shamsul Bahrain; M/s Skrine & Co
For the 1st respondent - Prasad Abraham; M/s Prasad Abraham & Assocs
For the 2nd respondent - M David Morais (Sunita Nathan with him); M/s M David Morais

JUDGMENT

Gopal Sri Ram JCA:

The appellant in this case is a firm of solicitors. It was originally instructed by a private limited company, Jasudi Sdn. Bhd. ('Jasudi') to prepare a sale and purchase agreement ('the agreement'). Jasudi was the vendor and a company called Kumpulan H.Y. Sdn Bhd ('HY') was the purchaser. The purchaser price was RM5 million of which RM1.5 million was paid as deposit. HY raised a loan from the first respondent to pay the balance of the purchase price. It did this by agreeing to create a charge in favour of the first respondent Bank. For the purpose of the loan transaction, the first respondent Bank requested the appellant to attend to the documentation and registration of the charge. That was done and the monies due under the loan were released shortly after creation of the charge.

Under the terms of the agreement between Jasudi and HY, at least as understood by the appellant, the balance of the purchase price by way of loan from the first respondent was to come into the appellant's hands. Unfortunately, that did not happen. What the first respondent did was to release the monies directly to HY. The evidence at this stage of the proceedings discloses that Jasudi was not paid the balance of the purchase price in full and that it had taken steps to sue HY and the appellant for specific performance or alternatively for the return of the title.

The first respondent filed the present originating summons on 21 January 1995. By it, the first respondent claimed *inter alia* the return of the issued document of title. The second respondent is one of the guarantors of the loan advanced by the first respondent to HY. His interest in the matter stems from the fact that he claims to have settled the loan sum in full and by virtue of s. 93 of the Contracts Act 1950, claims the right to possession of the security, ie, the issue document of title to the land in question.

When the originating summons was first heard before the learned trial judge, he took the view that it should be proceeded with as a writ. That order of the judge left the first respondent high and dry because on the face of the documents it had advanced money but did not have custody of the issue document of title to the land which formed the subject matter of the charge. Under s. 244 of the National Land Code 1965 the first respondent as chargee is *prima facie* entitled to have custody of the issue document of title. Whether it has been paid off by the intervener or whether its rights under s. 244 have been extinguished are matters which the learned trial judge will no doubt resolve at the hearing of the converted originating summons.

After the judge had made the order for conversion of the originating summons, the first respondent took out an application to have the issue documents of title placed in its custody. The appellant resisted that application. The judge, after hearing arguments, directed the appellant to deliver up the issue document of title of the property in question to the first respondent. It is against this order that the present appeal has been brought.

The sole question for determination at this stage whether the appellant as solicitor may successfully, resist the first respondent's claim for custody of the issue document of title. That question, I think, must be answered in the negative and against the appellant. It is axiomatic; and no citation of authorities is required for the proposition; that a solicitor acting as a stakeholder has no claim whatsoever to the subject matter of this stakeholding. If numerous claims are made of him in respect of the subject matter of the stakeholding, it is plain where his duty lies. It is for him to apply to the court by way of interpleader proceedings to seek its directions as to what he should do. That did not happen in the present case.

In my judgment the appellant cannot resist the first respondent's claim on the ground that Jasudi has not been satisfied or that the second respondent has settled the loan in full. Those are issues germane in any dispute between the first and second respondents, or between HY and Jasudi. They afford absolutely no defence to the first respondent's application for delivery up of the issue document of title.

Small wonder, then, that the judge granted an order in terms of the first respondent's application.

I am of the view that this appeal is devoid of merit and should be dismissed. Since counsel have agreed that we should fix costs, I award costs of RM500 for each respondent. The deposit of RM500 lodged in court is to be paid to the first respondent in full satisfaction of its costs. All orders of the made by the judge in the court below are affirmed.

Abdul Malek Ahmad JCA:

I Agree with the views of my learned brother Gopal Sri Ram JCA. I too would dismiss this appeal with costs.

Ahmad Fairuz JCA:

I agree that this appeal should be dismissed and that the order of the court below be affirmed.

Reported by Gan Peng Chiang